

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No.: 00361.8035.US00

Applicant(s): Michael Tesar et al. Confirmation No.: 8662

Appl. No.: 10/588,568 Examiner: Unassigned

Filing Date: February 7, 2005 Art Unit: Unassigned

Title: ANTI-CD38 HUMAN ANTIBODIES AND USES THEREOF

Petition for Revival of Application
Abandoned Unintentionally Under 37 C.F.R. § 1.137(b)

Commissioner for Patents
United States Patent and Trademark Office
Customer Service Window, Mail Stop Petition to Revive
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicant petitions for revival of the above-identified application, which became abandoned for failure to file a timely response to the U.S. Patent and Trademark Office's ("PTO") Notice of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) ("Notification of Missing Requirements"), mailed February 27, 2007. A Notice of Abandonment for the captioned application ("the '568 application") was mailed on May 22, 2009.

The entire delay in filing the required response to the Notification of Missing Requirements from the due date for the response until the filing of the instant petition under 37 CFR 1.137(b) was unintentional.

A complete response to the Notification of Missing Requirements is being filed simultaneously with this petition, together with payment of all fees. The Commissioner is authorized to charge any fees determined to be required for filing this petition and the response to Deposit Account No. 50-2283..

The declaration by Dr. Bernd Hutter ("the Hutter declaration") appended hereto states that the entire delay in filing the required response to the Notification of Missing Requirements of the '568 application was unintentional, and further states that the assignee of the application is pursuing corresponding national phase applications in Australia, Brazil, Canada, China, Europe, Hong Kong, India, Israel, Japan, Korea, Mexico, Norway, New Zealand, Russia, Singapore, and South Africa. The number of these filings further demonstrates that the abandonment of the '568 application was unintentional, since there would be little point in abandoning a US application while simultaneously pursuing applications in so many other jurisdictions.

The accompanying declaration by Downetta Teagle-Tate ("the Tate declaration") also describes actions by applicants' representative that further demonstrate that the abandonment of the '568 application was unintentional. Briefly, the Tate declaration describes how applicants' representative was unaware that a Notification of Missing Requirements had been mailed at the time that a response to that Notification was due, and further describes the efforts made by applicants' representative in 2008 to ascertain the status of the '568 application, which was unavailable in the USPTO PAIR database. Moreover, applicants' representative filed an Information Disclosure Statement in the application in September 2008. These actions demonstrate that the abandonment of the '568 application was unintentional, since there would have been no point in making status inquiries or filing papers in an application that intentionally was abandoned.

The '568 application was filed after June 8, 1995, and therefore a grantable petition does not require a Terminal Disclaimer.

Pursuant to 37 C.F.R. § 1.137(b), applicants submit herewith:

- 1) The Fee(s) Transmittal and small entity petition fee as set forth in 37 C.F.R. § 1.17(m) in the amount of \$810.00.
- 2) Additional claim fees of \$250.
- 3) Small entity surcharge of \$65 for late submission of the declaration by the inventors.
- 4) Copy of the "Sequence Listing" in both paper and computer readable form.

5) Declaration of the inventors, identifying the application by the international application number and international filing date.

Respectfully submitted,

Date: October 14, 2009
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